



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-70,722-03

EX PARTE TILON LASHON CARTER, Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
AND MOTION TO STAY THE EXECUTION IN CAUSE NO. C-371-011057-
0949973-B IN THE 371ST DISTRICT COURT
TARRANT COUNTY**

***Per curiam.* KEASLER and HERVEY, JJ., dissent.**

ORDER

We have before us a post-conviction application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5 and a motion to stay applicant's execution.

In November 2006, a jury convicted applicant of the offense of capital murder for murdering a person in the course of committing or attempting to commit robbery. TEX. PENAL CODE § 19.03(a)(2). Specifically, applicant was charged with and convicted of

intentionally causing the death of James Eldon Tomlin, “by restraining him and causing him to lie face down and by smothering him by exerting pressure on his head or face with an object unknown to the grand jury,” during the course of robbery. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071, and the trial court, accordingly, set punishment at death. This Court affirmed applicant’s conviction and sentence on direct appeal. *Carter v. State*, No. AP-75,603 (Tex. Crim. App. Jan. 14, 2009)(not designated for publication). On September 5, 2008, applicant filed in the convicting court his initial post-conviction application for a writ of habeas corpus in which he raised eighteen claims. This Court denied applicant relief. *Ex parte Carter*, No. WR-70,722-01 (Tex. Crim. App. Dec. 15, 2010)(not designated for publication).

On May 8, 2017, applicant filed in the convicting court his first subsequent application. In the subsequent application, applicant asserts that (1) the State denied him due process when it presented false or misleading testimony by the State Medical Examiner; (2) his trial counsel were ineffective because they failed to investigate and present available evidence that he did not intend to kill the victim; and (3) new scientific evidence, which was unavailable at the time of his trial, contradicts scientific evidence the State relied on at this trial.

On May 12, 2017, we stayed applicant’s execution after reviewing his writ application. We now remand applicant’s first and third allegations to the trial court for

resolution.

IT IS SO ORDERED THIS THE 27th DAY OF SEPTEMBER, 2017.

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